

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY HOWARD, <sup>1</sup>	§	
	§	No. 61, 2010
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Petitioner Below,	§	File No. 0906011000
Appellee.	§	

Submitted: April 26, 2010

Decided: June 1, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 1<sup>st</sup> day of June 2010, upon consideration of the appellant's brief pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"), his defense counsel's motion to withdraw, and the State's response, it appears to the Court that:

(1) After a hearing on September 23, 2009, a Family Court Commissioner found the appellant, Henry Howard, delinquent of misdemeanor theft and misdemeanor criminal mischief. On the same date, the Commissioner sentenced Howard to an indefinite commitment at Level V suspended for one year of juvenile probation at Level II.

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<sup>1</sup> By Order dated February 12, 2010, the Court *sua sponte* assigned a pseudonym to the juvenile appellant. Del. Supr. Ct. R. 7(d).

(2) On September 25, 2009, Howard, through his defense counsel, filed written objections to the Commissioner's order. On October 12, 2009, the State filed a response to the objections. By order dated January 8, 2010, a Family Court Judge, after reviewing the matter *de novo*, affirmed the Commissioner's September 23, 2009 order. This appeal followed.

(3) On appeal, Howard's defense counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). Howard's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues.

(4) The record reflects that Howard's counsel informed Howard by letter of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also informed Howard of his right to supplement counsel's presentation. Howard has not raised any issues for this Court's consideration. In the absence of any claim of error, the State has moved to affirm the judgment of the Family Court.

(5) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold. First, this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for

arguable claims.<sup>2</sup> Second, this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>3</sup>

(6) This Court has reviewed the record carefully and has concluded that Howard's appeal is wholly without merit and devoid of any arguably appealable issue. The Court is satisfied that Howard's counsel made a conscientious effort to examine the record and the law and properly determined that Howard could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>2</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

<sup>3</sup> *Id.*